

TENNESSEE GENERAL ASSEMBLY
FISCAL REVIEW COMMITTEE



FISCAL NOTE

HB 800 - SB 1149

February 20, 2017

SUMMARY OF BILL: Enacts *Leigh Ann's Law* that authorizes, and in some cases requires, any court with jurisdiction to impose a penalty of imprisonment of 10 days and a fine of \$370 for contempt if arising from a violation of an order of protection, a court-approved consent agreement, an injunction, or a no contact order.

ESTIMATED FISCAL IMPACT:

Increase Local Revenue – Exceeds \$37,400

Increase Local Expenditures – Exceeds \$72,700*

Other Fiscal Impact – The proposed legislation will impact expenditures from the Indigent Defense Fund and the caseload of the District Attorneys General Conference and the District Public Defenders Conference. However, due to unknown variables and lack of data, the increase in expenditures from the Indigent Defense Fund and the necessary resources needed by the courts and public defenders cannot reasonably be estimated.

Assumptions:

- Tennessee Code Annotated § 29-9-102 authorizes a court to inflict punishment for civil contempt of court for certain misbehavior or willful conduct. Tennessee Code Annotated § 29-9-103 limits punishment for contempt to 10 days of imprisonment and a fine of \$50 for circuit, chancery, and appellate courts. The punishment is limited to 10 days and a fine of \$10 for all other courts.
- The proposed legislation amends Tenn. Code Ann. § 29-9-103 to authorize a court to impose 10 days of imprisonment and a fine of \$370 as punishment for contempt resulting from a violation of an order of protection, a court-approved consent agreement, an injunction, or a no contact order.
- Tennessee Code Annotated § 36-3-610 authorizes a court to hold a person in civil or criminal contempt for a violation of an order of protection or a court-approved consent agreement, including a fine up to \$50.
- The proposed legislation amends Tenn. Code Ann. § 36-3-610 to require a court to impose a punishment of 10 days of imprisonment and a fine of \$370 in some cases.

- Contempt proceedings are not subject to a jury trial. See *Tenn. R. Crim. P. 42, Advisory Commission Comment* (“No right to a jury trial exists upon a state charge of criminal contempt under present law establishing the penalties for the offense.”). This is because the penalty for contempt under current law is limited to 10 days of imprisonment and a fine of \$50.
- Article VI, Section 14 of the Constitution of Tennessee provides:

No fine shall be laid on any citizen of this State that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers, who shall assess the fine at the time they find the fact, if they think the fine should be more than fifty dollars.
- The proposed legislation increases the fine for contempt to \$370, and requires such a fine under Tenn. Code Ann. § 36-3-610. The proposed legislation will result in most persons being held in contempt having a right to a jury trial for the contempt proceeding.
- The potential impacts associated with granting the right to a jury trial for contempt proceedings are:
 - Increased state judicial resources in circuit and chancery courts for each trial;
 - Increased resources for public defenders to represent indigent defendants;
 - Increased expenditures from the Indigent Defense Fund for appointed counsel to represent indigent defendants;
 - Increased local expenditures to empanel a jury for each trial; and
 - Increased local expenditures for housing those held in contempt under Tenn. Code Ann. § 36-3-610.
- Statistics from the Administrative Office of the Courts (AOC) show an average of 25 contempt proceedings under Tenn. Code Ann. § 29-9-102. Further, the AOC’s most recent Annual Statistical Report shows 8,105 orders of protection were filed in state courts during FY14-15.
- These statistics do not include orders of protection filed and handled in general sessions courts. It is assumed that at least 2,000 orders of protection are filed in general sessions courts each year.
- No data exists to determine the number of orders of protection that are violated each year. However, it is reasonable to assume that at least one percent, or a minimum of 101 orders of protection $[(8,105 + 2,000) \times 0.01]$, are violated each year, and, therefore, would trigger the violators’ right to a jury trial.
- A jury requires 12 jurors, who are paid \$10 per day. It is assumed that each trial will last at least one day. Local governments bear the financial burden of compensating jurors. The recurring increase in local expenditures is estimated to exceed \$12,120 $[(12 \text{ jurors} \times \$10 \text{ per day}) \times 101 \text{ minimum trials}]$.
- A minimum of one hundred trials, which could be as high as several hundred, will have a significant impact on the state court system. Not only to the Indigent Defense Fund, but also the public defenders will be impacted if a violator is indigent. Further, the resources of court time, filings, and the delay of other court matters will impact circuit and chancery courts. However, there is insufficient data and unknown variables to reasonably estimate the increase in expenditures from the Indigent Defense Fund or to determine the necessary resources needed by the courts and public defenders.

- The proposed legislation will require each violator to serve 10 days of imprisonment in some cases. The estimated 2017 cost per inmate per day for local jails is \$60.00. The cost to house a violator of an order protection will be \$600 (\$60 per day x 10 days). As a result, the recurring increase in local incarceration costs is estimated to exceed \$60,600 (\$600 per violator x 101 minimum violators).
- The total recurring increase in local expenditures as a result of this bill is reasonably estimated to exceed \$72,720 (\$12,120 for minimum jury costs + \$60,600 for minimum local incarceration costs).
- It is assumed that a violator will pay the \$370 fine. The recurring increase in local revenue is estimated to exceed \$37,370 (\$370 fine x 101 minimum violators).

**Article II, Section 24 of the Tennessee Constitution provides that: no law of general application shall impose increased expenditure requirements on cities or counties unless the General Assembly shall provide that the state share in the cost.*

CERTIFICATION:

The information contained herein is true and correct to the best of my knowledge.



Krista M. Lee, Executive Director

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